IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 23 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMM. OF C.EX. & CUSTOMS

Versus

MUKESH PRINTS

Appearance:
MR ASIM J PANDYA for Petitioner No. 1
NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The Bailiff report indicates that the factory of the respondent is closed since last ten years; the factory premises are in dilapidated condition and that even a watchman is not found.

2. In view of the above, Mr.Asim Pandya, learned

Addl. Central Government Standing Counsel for the applicant - revenue submits that in spite of the best attempt made to serve the respondent, the respondent has not been served. However, the Court may take up this application for hearing as no useful purpose will be served by waiting any longer since in the other identical matters, this Court has directed the Tribunal to refer the same question of law which is proposed in the present application.

3. Having heard the learned Counsel for the applicant-revenue, we find that there is some substance in the above submission of the learned Counsel.

4. Having regard to the order dated 5/4/1999 passed by this Court in the case of M/s. Gomti Processors, Surat, we direct the Central Excise, Customs & Gold Control Appellate Tribunal to refer the following question of law to this Court and to submit a statement of case in accordance with law :-

"Whether penal provisions relating to confiscation of goods and imposition of penalty are applicable to Man Made Fabrics which are 'Excisable Goods' finding mention in Schedule to the Central Excise Tariff Act, 1985 though they are liable to Additional Duty of Excise only, in absence of any specific penal provisions in Section 3(3) of Additional Duties of Excise (Goods of Special Importance) Act, 1957."

This application stands disposed of accordingly. Rule is accordingly made absolute with no order as to costs.

(M.S.Shah, J) (D.A.Mehta,J)

'Bhavesh'